

**BEFORE THE ATTORNEY GENERAL OF WEST VIRGINIA
STATE CAPITOL
CHARLESTON, WEST VIRGINIA**

IN THE MATTER OF:

**BLUE WORLD POOLS, INC.
120 INTERSTATE NORTH PARKWAY EAST
SUITE 426
ATLANTA, GEORGIA 30339**

ASSURANCE OF DISCONTINUANCE

The Attorney General of West Virginia ("Attorney General") has been investigating certain acts and practices of Blue World Pools, Inc., a Nevada corporation ("Blue World"), which may be subject to an order by the Attorney General or by a court of law. In accordance with West Virginia Code § 46A-7-107, Blue World, without in any way admitting that any of its practices were in violation of the West Virginia Consumer Credit and Protection Act, or other applicable state and federal laws, consents to observe the following terms of this Assurance. It is the parties' intention that the agreements made by Blue World in this Assurance herein are solely for the purpose of settlement and nothing herein shall be taken as or construed to be an admission or concession of any violation of law, rule, statute or regulation or of any other matter of fact or law or of any liability or wrongdoing. No part of this Assurance shall constitute evidence of any liability, fault or wrongdoing and shall not be construed or used as a waiver or limitation of any defense otherwise available to Blue World or of Blue World's right to defend itself from, or make any argument in, any private claim or suit relating to the subject matter or terms of this Assurance. No part of this Assurance shall create a private cause of action or confer any right to any third party.

BACKGROUND AND APPLICABLE LAW

1. Blue World is a foreign corporation that was engaged in the sale and financing of above-ground pools ("pools") to consumers in West Virginia from 2008 through 2012. As such, Blue World's business practices are subject to the provisions set forth in the West Virginia Consumer Credit and Protection Act ("WVCCPA"), W. Va. Code § 46A-1-101 et seq., which is regulated by the Attorney General, W. Va. Code § 46A-7-101.
2. Blue World maintained its registered office at 2533 North Carson Street, Suite 4925, Carson City, Nevada, 89706 and its principal place of business at 120 Interstate North Parkway East, Suite 426, Atlanta, Georgia 30339 at all times pertinent herein.
3. Michael A. Warren is and was the president of Blue World at all times pertinent hereto.
4. Blue World is and was a "merchant" as that term is defined by W. Va. Code § 46-2-104(I) of the Uniform Commercial Code and as that term is used generally throughout the WVCCPA.
5. As a merchant engaged in the sale and financing of pools to West Virginia Consumers, Blue World must honor and may not waive the implied warranty of merchantability, nor may it limit any remedy provided by law, including the measure of damages available, for a breach of warranty, express or implied, W. Va. Code § 46A-6-107.
6. Blue World engaged in the extension of "credit" to West Virginia Consumers as defined by the WVCCPA, W. Va. Code § 46A-1-102(17).
7. The West Virginia Residential Mortgage Lender, Broker and Servicer Act ("West Virginia Mortgage Act"), W. Va. Code § 37-17-1 et seq., which is regulated by the Commissioner

of the Division of Financial Institutions ("DFI"), governs the negotiating or arranging, servicing, and making of primary or subordinate mortgage loans by any persons in the regular course of business in West Virginia.

8. In its capacity as a person that made loans to West Virginia Consumers that are secured by deeds of trust on their homes, the Attorney General asserts that Blue World is and was a "lender" as defined by the West Virginia Mortgage Act, W. Va. Code § 31-17-1(I).

9. The West Virginia Mortgage Act provides that no persons may engage in the business of a mortgage lender in West Virginia unless they first obtain a license to do so from the Commissioner, W. Va. Code § 31-17-2(a).

10. The DFI issued an Order to Cease and Desist against Blue World on April 28, 2014, in which it determined that Blue World was engaging in the business of making mortgage loans in West Virginia without a license to do so and ordered it to permanently cease and desist from such activity. At the time the DFI issued its order, Blue World had already ceased doing business in the state of West Virginia.

11. Blue World engaged in "door-to-door sales" as defined by the Federal Trade Commission Rule Concerning Cooling-Off Period For Sales Made At Homes Or At Certain Other Locations ("FTC Rule"), 16 C.F.R. § 429.0(a). As such, Blue World was required to furnish each consumer with notice of the buyer's right to cancel as well as a notice of cancellation in the manner and form prescribed by the FTC Rule.

12. The sales that Blue World entered into with consumers at their homes also meet the definition of a "home solicitation sale" as defined by the WVCCPA, W. Va. Code § 46A-1-2(22). As such, Blue World must comply with the protections afforded by the WVCCPA in addition to the

requirements of the FTC Rule.

13. In addition to an unconditional three-day right to cancel a home solicitation sale, the Uniform Commercial Code affords purchasers of goods the right to reject before delivery or revoke acceptance after delivery of any goods that are not "merchantable" as defined by W. Va. Code § 46A-6-102(c). *See generally* W. Va. Code § 46-2-601 et seq.

14. The WVCCPA provides "[u]nfair methods of competition and unfair or deceptive act or practices in the conduct of any trade or commerce are hereby declared unlawful," W. Va. Code § 46A-6-104.

15. The WVCCPA specifies that the term "unfair methods of competition and unfair or deceptive acts or practices" means and includes, but is not limited to, certain conduct including the following:

(9) Advertising goods or services with intent not to sell them as advertised;

(12) Engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding;

(13) The act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any goods or services, whether or not any person has in fact been misled, deceived or damaged thereby;

(14) Advertising, printing, displaying, publishing, distributing or broadcasting, or causing to be advertised, printed, displayed, published, distributed or broadcast in any manner, any statement or representation with regard to the sale of goods or the extension of consumer credit including the rates, terms or conditions for the sale of such goods or the extension of such credit, which is false, misleading, or deceptive, or which omits to state material information which is necessary to make the statements therein not false, misleading or deceptive;

See W. Va. Code § 46A-6-102(f)(9)(12)(13)(14).

16. The WVCCPA prohibits a creditor from collecting, attempting to collect, or representing that it can collect a debt collector's fee or charge for services rendered, including attorney's fees, in the collection of delinquent accounts. See W. Va. Code § 46A-2-127(g), W. Va. Code § 46A-2-128(c), W. Va. Code § 46A-2-128(d), and W. Va. Code § 46A-6-104.

17. The WVCCPA prohibits "excess charges," however denominated, and authorizes the court to impose a civil penalty payable to the consumer of up to ten times the amount of the excess charge if the charge was made in deliberate violation of or in reckless disregard of the WVCCPA or when the creditor has refused to refund the excess charge within a reasonable time after demand by the consumer or the attorney general, W. Va. Code § 46A-7-111.

18. Blue World is a "debt collector" as defined by W. Va. Code § 46A-2-122(d).

19. The West Virginia Legislature created the Lending and Credit Rate Board ("Board"), W. Va. Code § 47A-1-1 et seq. and authorized the Board to prescribe maximum sales finance charges in consumer credit transactions.

20. The Board entered an order effective December 1, 1999, which is still in effect today, establishing a maximum sales finance charge of 25% per annum in consumer credit sales such as the ones made by Blue World here.

21. Loans to consumers in which the interest rate exceeds the maximum amount prescribed by the Board for that category of transaction are "usurious" as defined by W. Va. Code § 47-6-6.

22. When a person or company engages in the practice of making "usurious loans" as defined by W. Va. Code § 47-6-6, the loans are void as to all interest and, in addition, the consumer may recover "an amount equal to four times all interest agreed to be paid and charged and in any

event a minimum of \$100." Id.

23. The WVCCPA provides that every written agreement entered into by a consumer for the purchase of goods or services in consumer transactions must use "plain language." Specifically, each consumer contract must:

(1) Be written in a clear and coherent manner, using words with common and everyday meanings; (2) Use type of easily readable size and ink which adequately contrast with the paper; and (3) Be appropriately organized and captioned by its various sections to be easily understood.

See W. Va. Code § 46A-6-109(a).

24. The WVCCPA provides that a court may refuse to enforce an agreement arising from a consumer credit sale if it finds as a matter of law that the agreement was unconscionable at the time it was made or was induced by unconscionable conduct, W. Va. Code § 46A-2-121.

25. The violation of any West Virginia or federal statutes pertaining to business registration or licensing requirements, usury, or any other law intended to protect the public and foster fair and honest competition constitutes an unfair or deceptive act or practice as defined by the WVCCPA, W. Va. Code § 46A-6-104.

26. Repeated and willful violations of the WVCCPA may subject the violator to civil penalties of up to \$5,000 for each violation, in accordance with W. Va. Code § 46A-7-11 1 (2).

27. As used herein, the term "West Virginia Consumers" or "West Virginia Accounts" shall mean and refer to all persons who purchased pools from Blue World that were installed at their homes in West Virginia and to any financial information concerning their accounts.

THE ATTORNEY GENERAL'S ALLEGATIONS

28. The Attorney General commenced an investigation of Blue World on the belief that it was engaging in unfair or deceptive acts or practices and other violations of the WVCCPA in connection with the sale and financing of pools in West Virginia.

29. During the investigation, Blue World produced the records of all its sales to West Virginia Consumers during the period from 2008 through 2012, after which Blue World ceased making new sales in West Virginia.

30. The records produced by Blue World disclosed that it made a total of 108 sales of pools to West Virginia Consumers. Of this amount, 35 sales were by cash and the remaining 73 sales were financed initially by Blue World.

31. Blue World secured all of its finance agreements by recording a deed of trust against the consumers' real property in which it named itself, rather than a disinterested third party, as the trustee.

32. Of the 73 sales initially financed by Blue World, 18 of the finance agreements were sold to Community Home Financial Services, Inc. ("CHFS"), a national consumer finance company based in Jackson, Mississippi.

33. CHFS is currently the petitioner in a Chapter 11 bankruptcy proceeding in the United States Bankruptcy Court for the Southern District of Mississippi, Case No. 12-01703-33.

34. Kristina M. Johnson was appointed Trustee for CHFS's Chapter 11 Bankruptcy Estate by Order entered January 21, 2014.

35. After reviewing any complaints or information received from West Virginia consumers as well as the documents produced by Blue World and the CHFS Trustee in response

to his investigative subpoenas, the Attorney General contends that Blue World had engaged in violations of the WVCCPA, including but not limited to the following:

(a) that Blue World engaged in an advertising campaign that has the capacity to be an unfair or deceptive act or practice in alleged violation of W. Va. Code § 46A-6-102(f)(9), (12), (13), (14), and W. Va. Code § 46A-6-104.

(b) that Blue World failed to provide proper notice of the buyer's right to cancel in the manner and form required by state and federal law, in alleged violation of the FTC Rule, W. Va. Code § 46A-2-132, W. Va. Code § 46A-2-133, and W. Va. Code § 46A-6-104.

(c) that Blue World engaged in the practice of making mortgage loans to West Virginia Consumers without a license as required by the West Virginia Mortgage Act, in alleged violation of W. Va. Code § 31-17-2(a) and W. Va. Code § 46A-6-104.

(d) that Blue World added undisclosed finance charges to the amount financed in at least 12 transactions in 2008, which amounts constituted unlawful excess charges in alleged violation of W. Va. Code § 46A-7-111(1) and W. Va. Code § 46A-6-104 and that the undisclosed charges when added to the amount financed in the 12 transactions referred to hereinabove changed the annual percentage rate (APR) as disclosed on the finance agreements to an APR above the maximum permissible amount for consumer credit sales in West Virginia, 25%, which rendered those 12 contracts usurious, in alleged violation of W. Va. Code § 47-6-6 and W. Va. Code § 46A-6-104.

(e) that Blue World's sale contract purported to limit or exclude its obligations under the implied warranty of merchantability and to limit or exclude its liability for measures of damages available to consumers for breaches of warranty, express or implied, that has the

capacity to be in violation of W. Va. Code § 46A-6-107 and W. Va. Code § 46A-6-104.

(f) that Blue World's sales contract contains a provision that sought to waive consumers' rights under the WVCCPA that has the capacity to constitute an unfair or deceptive acts or practices, in alleged violation of W. Va. Code § 46A-1-107 and W. Va. Code § 46A-6-104 respectfully.

(g) that Blue World's sales contract contains provisions that allow for an unlawful excess charge that has the capacity to constitute an unfair or deceptive act or practice, in alleged violation of W. Va. Code § 46A-7-111(1) and/or W. Va. Code § 46A-6-104.

(h) that the sales contract and related documents that Blue World requires consumers to sign memorializing the terms and conditions of the transactions are not written in a clear and coherent manner, do not use words with common and everyday meanings, do not use type of an easily readable size and ink which adequately contrast with the paper, and are not appropriately organized and captioned by its various sections to be easily understood, that has the capacity to be in violation of the public policy established by W. Va. Code § 46A-6-109 which requires consumer contracts to be written in plain language.

(i) that, notwithstanding the severability clause contained in Blue World's sales contract, the items alleged herein above when viewed in their totality have the capacity to be viewed as unconscionable conduct by Blue World to induce consumers to enter into an agreement which was itself unconscionable, in alleged violation of W. Va. Code § 46A-2-121 and W. Va. Code § 46A-6-104.

AGREEMENT

36. Without admitting that it has engaged in or committed any of the acts or practices as

alleged herein, or that such acts or practices violate the WVCCPA or any other state or federal consumer protection laws, and notwithstanding the evidence contradicting the Attorney General assertions, Blue World agrees to take the actions enumerated below in order to resolve the concerns of the Attorney General and conclude any investigation or action by the Attorney General against Blue World.

37. Blue World agrees to permanently refrain from engaging in the sale and financing of pools or in any other transactions with consumers in West Virginia, except such actions as may be necessary to meet its obligations, if any, under any still-existing warranties as noted below.

38. Blue World agrees, within 30 days from the date of execution of this Assurance, to provide the Attorney General with properly prepared and executed documents as may be necessary to file with the clerks of the county commissions in each county where it sold pools to release its deeds of trust against the homes and/or real property of West Virginia Consumers or provide evidence of a prior release of same. The Attorney General shall have the responsibility of filing such documents. At the time of delivery of the aforementioned release documents, Blue World agrees to provide the Attorney General with funds sufficient for the statutory recordation fees for the foregoing releases.

39. Blue World agrees to cancel sales and financing agreements entered into with West Virginia Consumers which are currently held by Blue World. As such, Blue World agrees to relieve West Virginia Consumers from the obligation to pay any balance allegedly owed on any of its accounts on and after October 16, 2014, and all such accounts shall be closed with a zero balance.

40. Blue World promises to forthwith refrain from all further electronic debts from the checking or savings accounts of West Virginia Consumers. Blue World further agrees that any

payments that it may receive or inadvertently post to consumers' accounts on or after October 16, 2014 shall be promptly returned directly to all such consumers. Proof that all such payments, if any, have been returned or refunded to consumers shall also be provided contemporaneously to the Attorney General.

41. Blue World agrees, if applicable, to notify the three major consumer reporting agencies to delete any information it may have reported pertaining to its West Virginia Accounts from the credit records of West Virginia Consumers.

42. Blue World acknowledges that the accounts of West Virginia Consumers that are the subject of this Assurance are disputed and that any amounts allegedly owed by the West Virginia Consumers are offset by the potential private claims of consumers and the claims of the Attorney General for alleged violation of the WVCCPA, whether described herein above or not. Accordingly, Blue World acknowledges that it is not required to file a 1099-C Cancellation of Debt form with the Internal Revenue Service and agrees that it will not do so.

43. Blue World agrees that it forfeits or abandons any right it has, or may have had, to recover possession of the pools it sold and, by the signing of this Assurance, transfers and relinquishes any such ownership or security interest it had or may have had in such pools to the West Virginia Consumers.

44. Blue World further acknowledges that nothing in this Assurance extinguishes or relieves it from its obligation to service the pools under any still- existing warranties, if any. The Attorney General acknowledges that any actions taken by Blue World or its independent contractors in the course of fulfilling its obligations to West Virginia Consumers under its warranties, if any, on the pools, including the sale of component parts, will not constitute a violation of this Assurance.

45. Blue World shall, at the time it signs and returns this Assurance, make a payment of one million dollars (\$1,000,000.00) in certified funds or by wire transfer to the State of West Virginia. Of this money, five hundred thousand dollars (\$500,000.00) shall be designated for use as refunds/restitution to West Virginia consumers who purchased pools from Blue World. The remaining monies, plus any amount remaining from monies designated for consumer refunds/restitution, may be used by the Attorney General, at his discretion, for any one or more of the following purposes: direct and indirect administrative, investigative, compliance, enforcement, or litigation costs and services incurred for consumer protection purposes; to be held of appropriation by the Legislature; and/or distribution of taxpayers and/or consumers.

46. Blue World further agrees to provide the Attorney General, within 10 days after the date of execution of this Assurance, with a spreadsheet in Microsoft Excel, Access, or other searchable electronic format containing the following information in its possession about all of its West Virginia Accounts: the name, address, telephone numbers, and Social Security Numbers; the total amount of payments collected by Blue World on an account or up until the time the account was sold or assigned to Community Home Financial Services ("CHFS"); the current balance allegedly owed by each West Virginia Consumer at the time of the report or the balance owed on an account as of the date the account was sold or assigned to CHFS.

47. The Attorney General agrees that Blue World shall have no further obligations to West Virginia Consumers or the Attorney General for the accounts that were sold to CHFS after payment of the \$1 million as provided hereinabove and fulfillment of the other terms and conditions of this Assurance.

48. Upon payment of the funds described herein, providing of the information and

documents described herein, and execution of this Assurance, the Attorney General agrees to provide Blue World with a letter confirming that its obligations under this Assurance have been fulfilled. The letter shall also confirm that the Attorney General waives all claims he has, or may have had, against Blue World, including its officers, directors, employees, agents shareholders and independent contractors arising from its sales and financing of pools to West Virginia Consumers (including those accounts it sold to CHFS) and that the Attorney General's investigation of Blue World has been fully concluded.

49. Blue World further promises not to represent directly or indirectly, or in any manner whatsoever, that the Attorney General has sanctioned, condoned or approved, in any manner whatsoever, any part or aspect of its business operations, unless written authorization is obtained from the Attorney General, and then only to the extent of said written authorization. It is agreed and understood that the contents of this Assurance are and shall be public information to the same extent any other assurance of discontinuance is public information, but not greater.

50. It is further agreed and understood that the parties to this Assurance intend to cooperate in securing and obtaining compliance with the requirements of this Assurance and upon written notice from the Attorney General describing same, Blue World shall have the right and opportunity to cure any alleged deficiency in the performance of its obligations under this Assurance.; subject to Blue World's right to cure, the matters settled by the filing of this Assurance may be reopened by the Attorney General of West Virginia if necessary for the purpose of enforcing the specific agreements of this Assurance, but not otherwise.

IN WITNESS WHEREOF, Blue World has caused this Assurance to be executed and represents that the person whose signature appears below is authorized to bind it to the terms and conditions set forth herein. The Attorney General of West Virginia or his designate has approved this Assurance.

BLUE WORLD POOLS, INC.,
A Nevada corporation

BY: Michael A. Warren President
Michael A. Warren, President

DATED: 12/24/2014

STATE OF Georgia

COUNTY OF Cobb, TO-WIT:

M. Jeanette White, a Notary Public in and for the County and State aforesaid, do hereby certify that Michael A. Warren, President of Blue World Pools, Inc., a Nevada corporation, has this day acknowledged the foregoing Assurance of Discontinuance before me in my said County and State.

My commission expires 1/22/17

NOTARY PUBLIC

M. Jeanette White

APPROVED BY:

Norman Googel

NORMAN GOOGEL
SENIOR ASSISTANT ATTORNEY GENERAL
Consumer Protection/Antitrust Division

DATED: *December 31, 2014*

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, TO-WIT:

Angelab White, a Notary Public, in and for the County and State aforesaid, do hereby certify that
Norman Googel, Senior Assistant Attorney General, has this day acknowledged the foregoing
Assurance of Discontinuance before me in my said County and State.

Angelab White
NOTARY PUBLIC

My commission expires

June 29, 2015

